

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
 Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 02-19-12
 Rule ID(s): 5163-5164
 File Date: 02/23/2012
 Effective Date: 05/23/2012

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. §4-5-205

| | |
|---------------------------------|---|
| Agency/Board/Commission: | Environment and Conservation |
| Division: | Remediation |
| Contact Person: | Robert L. Powell |
| Address: | 4 th Floor, L&C Annex 401 Church Street Nashville, Tennessee |
| Zip: | 37243-1538 |
| Phone: | (615) 532-0916 |
| Email: | Robert.Powell@tn.gov |

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|---|
| 0400-15-02 | Standards for Testing and Cleaning Quarantined Clandestine Drug Manufacturing Sites |
| Rule Number | Rule Title |
| 0400-15-02-.01 | Standards for Determining Living Space Safe for Human Use |
| 0400-15-02-.02 | Use of Qualified Professionals for Sampling and Cleanup |

| Chapter Number | Chapter Title |
|----------------|---|
| 1200-01-19 | Standards for Testing and Cleaning Quarantined Clandestine Drug Manufacturing Sites |
| Rule Number | Rule Title |
| 1200-01-19-.01 | Standards for Determining Living Space Safe for Human Use |
| 1200-01-19-.02 | Use of Qualified Professionals for Sampling and Cleanup |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rule

Chapter 0400-15-02 Standards for Testing and Cleaning Quarantined Clandestine Drug Manufacturing Sites

Table of Contents

0400-15-02-.01 Standards for Determining Living Space Safe for Human Use

0400-15-02-.02 Use of Qualified Professionals for Sampling and Cleanup

0400-15-02-.01 Standards for Determining Living Space Safe for Human Use

- (1) Methamphetamine shall not exceed 0.1 microgram/100 cm² on any surfaces.
- (2) Volatile Organic Compounds shall not exceed 1 ppm in air as measured under normal inhabitable ventilation conditions.
- (3) If it is determined that lead or mercury were used in the lab process, the standard for cleanup of lead on any surface shall not exceed 40µg/ft², and mercury shall not exceed 50 nanograms/m³ for indoor air. Lead acetate and mercuric chloride are used in the Amalgam process that uses phenylpropanone (P2P). This process is not commonly used, but may occasionally be encountered.

Authority: T.C.A. §§ 68-212-501, et seq. and 4-5-201 et seq.

0400-15-02-.02 Use of Qualified Professionals for Sampling and Cleanup.

- (1) Samples shall be collected and interpreted by a professional certified by the Commissioner as being able to perform the services of an industrial hygienist. Any person holding a certification from the American Board of Industrial Hygienists as a Certified Industrial Hygienist is deemed certified by this rule as being able to perform these services. Other persons who have the qualifications as industrial hygienists under T.C.A § 62-40-101 may make a written request to the Commissioner to be included on the list of persons or entities to perform the services of industrial hygienists for the purposes of these rules.
- (2) Clean up of properties shall be performed by a professional or company certified by the Commissioner as being able to perform the services of cleaning up sites used to manufacture methamphetamines. Any person holding a certification from the American Board of Industrial Hygienist as a Certified Industrial Hygienist is deemed certified by this rule as being able to perform clean up services at these sites. Other persons may make a written request to the Commissioner seeking certification to perform these services.

Authority: T.C.A. §§ 68-212-501, et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 12/22/2011 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. §4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/19/11

Rulemaking Hearing(s) Conducted on: (add more dates). 09/16/11

Date: 12-22-11

Signature: [Signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner



Subscribed and sworn to before me on: 12-22-11

Notary Public Signature: [Signature]

My commission expires on: My Commission Expires: May 6, 2013

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

[Signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

2-21-12
Date

Department of State Use Only

Filed with the Department of State on: 02/23/2012

Effective on: 05/23/2012

[Signature]
Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no comments received during the comment period.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. §4-5-202(a)(3) and T.C.A. §4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

This rulemaking changes the rule numbers from Chapter 1200-01-19 to 0400-15-02. It also makes housekeeping changes correcting editorial errors. Therefore, there is no impact on small business.

- (2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

There are no projected additional reporting, recordkeeping or administrative costs as a result of this rulemaking.

- (3) A statement of the probable effect on impacted small businesses and consumers.

There is no adverse affect on small businesses as a result of this rulemaking.

- (4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Department is unaware of alternatives to the proposed rules.

- (5) A comparison of the proposed rule with any federal or state counterparts.

There is no exact match with any federal or state counterparts.

- (6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Due to the administrative nature of this rulemaking, small businesses could not be exempt from this rulemaking.

Impact on Local Governments

Pursuant to T.C.A. §§4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

This rulemaking action will not have an impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. §4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rulemaking affects Chapter 1200-01-19. Its various additions and modifications will incorporate:

- a. Changes to the numbering designation of rules from 1200-01-19 to 0400-15-02; and
- b. Correcting typographical errors throughout the Chapter.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated under the authorities of T.C.A. §§ 68-212-501 et seq. and 4-5-201 et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All entities regulated under T.C.A. §§ 68-212-501 et seq. and 4-5-201 et seq. are affected by this rule. No one commented on this rule change.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any related Attorney General Actions or judicial ruling directly relating to the rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There will be no increase or decrease of revenues resulting from this rulemaking.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Robert L. Powell
Division of Remediation
4th Floor Annex,
401 Church Street
Nashville, Tennessee 37243-1538
(615) 532-0916

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson
Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Legal Services Director, Office of General Counsel
Tennessee Department of Environment and Conservation
20th Floor, L & C Tower
Nashville, TN 37243-1548
Alan.Leiserson@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any additional information requested by the committee.

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New Rule

Chapter 0400-15-02

Standards for Testing and Cleaning Quarantined Clandestine Drug Manufacturing Sites

Table of Contents

0400-15-02-.01 Standards for Determining Living Space Safe for Human Use

0400-15-02-.02 Use of Qualified Professionals for Sampling and Cleanup

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Authority: T.C.A. §§ 68-212-501, et seq. and 4-5-201 et seq.

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